

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

DARNELL WASHINGTON,

Defendant.

* * * * *

Case No. 13-CR-173 (JBW)

Brooklyn, New York

October 14, 2014

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE RAMON E. REYES, JR.
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

ERIK D. PAULSEN, ESQ.
Asst. United States Attorney
United States Attorney's Office
271 Cadman Plaza East
Brooklyn, NY 112010

For the Defendant:

LISA HOYES, ESQ.
DOUGLAS MORRIS, ESQ.
Federal Defenders of
New York, Inc.
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1 (Proceedings commenced at 3:19 p.m.)

2 THE CLERK: Criminal cause for pleading, docket
3 number 2013-CR-173, *U.S.A. versus Washington*.

4 Counsel for the government, please state your name
5 for the record.

6 MR. PAULSEN: Good afternoon, Your Honor. Erik
7 Paulsen for the United States government.

8 THE CLERK: Counsel for the defendant?

9 MS. HOYES: For Mr. Washington, Federal Defenders,
10 by Lisa Hoyes. Also present is Douglas Morris.

11 THE COURT: Good afternoon. Please be seated.

12 Mr. Washington, I'm advised by your attorney that
13 you wish to waive indictment and plead guilty to the
14 superceding information that's been filed against you. Is
15 that correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. This is a serious decision and
18 I'll have to make sure that you understand all of your rights
19 and the consequences of your plea.

20 To do that, I'll -- to do that, I'll have to ask
21 you some questions and that will require that your answers be
22 made under oath. So please stand up and raise your right
23 hand.

24 (The defendant is sworn.)

25 THE COURT: All right. Please be seated.

1 Do you understand, Mr. Washington, that having been
2 sworn, your answers to my questions will be subject to the
3 penalties of perjury or of making a false statement if you do
4 not answer truthfully?

5 THE DEFENDANT: Yes.

6 THE COURT: That means that if you answer falsely
7 to any of my questions, the government can prosecute you for
8 perjury and can use any of your false statements today during
9 that prosecution. Do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. I want you to understand that
12 this is Judge Weinstein's case. He is the judge who will
13 sentence you and make the ultimate decision as to whether to
14 accept your waiver of indictment and guilty plea.

15 If you wish, you have the absolute right to plead
16 guilty in front of him and there will be no prejudice to you.
17 Alternatively, if you wish, I will listen to your plea.

18 A transcript of this proceeding will be made by the
19 court reporter and Judge Weinstein will then review the
20 transcript in connection with rendering your sentence. Do
21 you understand?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you wish to give up your right to
24 plead guilty in front of Judge Weinstein and instead proceed
25 in front of me?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you making this decision
3 voluntarily and of your own free will?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has anyone threatened you or have any
6 promises been made to you to induce you to plead guilty in
7 front of me as opposed to pleading guilty in front of Judge
8 Weinstein?

9 THE DEFENDANT: No, sir.

10 THE COURT: Okay. In connection with that, I've
11 been given the order of referral from Judge Weinstein. It
12 bears a number of signatures, one of which is next to a
13 yellow arrow which I'm holding up. Is that your signature?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Before listening to your plea,
16 there are a number of questions, as I said, that I have to
17 ask you to make sure that your plea is valid. And if you
18 don't understand any of my questions, please let me know and
19 I'll re-word them. What's your full name?

20 THE DEFENDANT: Darnell Washington.

21 THE COURT: How old are you?

22 THE DEFENDANT: 25.

23 THE COURT: What schooling or education have you
24 had?

25 THE DEFENDANT: High school.

1 THE COURT: Graduate?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. Are you under the care of a
4 doctor or a psychiatrist for any reason?

5 THE DEFENDANT: Yes.

6 THE COURT: What -- what -- what is the reason?

7 THE DEFENDANT: Psychiatry.

8 THE COURT: Okay. Have you been prescribed any
9 medications for your psychiatric condition?

10 THE DEFENDANT: Yes.

11 THE COURT: What medications are you taking?

12 THE DEFENDANT: I'm on Depacote and I'm on Remeron.

13 THE COURT: All right. Do those medications affect
14 your ability to understand what's going on right now?

15 THE DEFENDANT: No.

16 THE COURT: Is your mind clear right now?

17 THE DEFENDANT: Yes.

18 THE COURT: You understand what we're talking
19 about?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. In the past 24 hours, have you
22 taken any drugs, alcohol or medicines or pills other than
23 what you've testified taking?

24 THE DEFENDANT: No.

25 THE COURT: Have you ever been hospitalized or

1 treated for narcotic addiction, alcoholism or mental or
2 emotional problems?

3 THE DEFENDANT: Mental.

4 THE COURT: Excuse me?

5 THE DEFENDANT: Mental problems.

6 THE COURT: All right. When was that?

7 THE DEFENDANT: I don't remember the date. Last
8 year, maybe. I'm not sure.

9 THE COURT: Prior to your arrest?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. And have you been diagnosed with
12 a specific psychiatric condition?

13 THE DEFENDANT: Borderline personality disorder.
14 That's it.

15 THE COURT: Okay.

16 THE DEFENDANT: And depression and anxiety also.

17 THE COURT: Okay. Thank you.

18 Mr. Washington, as a defendant in a criminal case,
19 you have the right to be represented by an attorney at every
20 stage of the proceedings and Ms. Hoyes, who is seated to your
21 right, has been appointed to represent you in this case.

22 If you want to talk to her about anything that
23 we're talking about, you have any questions that you want to
24 ask her, let me know. We'll take a break in the proceedings
25 and you can confer with her. Do you understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you had enough time to talk to her
3 about your case and the decision to enter a guilty plea?

4 THE DEFENDANT: Yes.

5 THE COURT: Have you had any difficulty
6 communicating with her?

7 THE DEFENDANT: No.

8 THE COURT: Are you satisfied with the
9 representation and advice that she has provided to you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Ms. Hoyes, you had these
12 conversations with Mr. Washington?

13 MS. HOYES: Yes, I have, Your Honor.

14 THE COURT: Have you had enough time to talk to him
15 about his case and the decision to enter a guilty plea?

16 MS. HOYES: Yes, I have.

17 THE COURT: Are you satisfied that he understands
18 the rights that he's giving up by waiving indictment and
19 pleading guilty?

20 MS. HOYES: I am.

21 THE COURT: Is he capable of understanding the
22 nature of these proceedings?

23 MS. HOYES: Yes, he is.

24 THE COURT: Do you have any doubt at all about his
25 competence to plead guilty at this time?

1 MS. HOYES: I do not.

2 THE COURT: Did you discuss with him the maximum
3 and minimum sentences and fines that could be imposed upon
4 him --

5 MS. HOYES: Yes.

6 THE COURT: -- if he pleads guilty?

7 MS. HOYES: I did.

8 THE COURT: All right. And did you explain to him
9 how the sentencing guidelines operate and how those
10 guidelines affect his case?

11 MS. HOYES: I did.

12 THE COURT: Okay. Mr. Washington, the government
13 has put before me a superceding information charging you with
14 two crimes. Count 1 is sexual exploitation of a child and
15 Count 2 is possession of child pornography. Have you seen a
16 copy of the superceding information?

17 THE DEFENDANT: Yes, I have.

18 THE COURT: And you've discussed the charges with
19 Ms. Hoyes?

20 THE DEFENDANT: Yes, I have.

21 THE COURT: And do you understand the charges
22 pending against you?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: In order to secure a conviction against
25 you for these crimes, the government would have to prove

1 beyond a reasonable doubt the following elements.

2 On the sexual exploitation of a child, the
3 government would have to prove that you employed, used,
4 persuaded, induced, enticed or coerced an individual to
5 engage in sexually explicit conduct for the purpose of
6 producing a visual depiction of such conduct, that the
7 individual was a minor at the time and that the depiction was
8 produced using materials that had been mailed, shipped or
9 transported in interstate or foreign commerce.

10 To prove -- or to sustain a conviction against you
11 for possession of child pornography, the government would
12 have to prove the following beyond a reasonable doubt. That
13 you knowingly possessed a visual depiction, that the visual
14 depiction was transported in interstate or foreign commerce
15 or produced using materials which had been shipped or
16 transported by any means, including by computer or by
17 Internet.

18 Third, that the production of the visual depiction
19 involved the use of a minor engaged in sexually explicit
20 conduct and portrays that minor engaged in that conduct, and
21 fourth, that you knew that the production of the visual
22 depiction involved the use of a minor engaging in sexually
23 explicit conduct and portrayed a minor engaging in that
24 conduct. Do you understand the elements of those crimes?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: Okay. Now Mr. Washington, the
2 government can't simply come into court and proceed on a
3 criminal case by way of an information. You have the right
4 under the Constitution and laws of the United States to have
5 evidence presented to a grand jury of at least 16 and not
6 more than 23 people and have that grand jury make a
7 determination of whether there was probable cause to believe
8 you committed the crime before the government could proceed
9 with its case.

10 If the government would fail to convince a majority
11 of the grand jurors that there was probable cause, no
12 indictment would be issued against you and no charges would
13 go forward.

14 I understand that you wish to waive your right to
15 be indicted by a grand jury and proceed instead on the
16 superceding information that's been filed. Is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you discussed with your attorney
19 the matter of waiving your right to be indicted by a grand
20 jury?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand your right to be
23 indicted by a grand jury?

24 THE DEFENDANT: Yes.

25 THE COURT: Ms. Hoyes, are you satisfied that Mr.

1 Washington understands what it is to waive indictment?

2 MS. HOYES: Yes, I am.

3 THE COURT: Do you see any reason why he should not
4 waive indictment?

5 MS. HOYES: I do not.

6 THE COURT: Mr. Washington, has anyone threatened,
7 forced or pressured you to waive your right to be indicted by
8 a grand jury?

9 THE DEFENDANT: No.

10 THE COURT: Do you, in fact, wish to waive your
11 right to be indicted by a grand jury?

12 THE DEFENDANT: Yes.

13 THE COURT: I understand that you've signed already
14 the waiver of indictment form and I'll ask you -- I'm holding
15 it up and there's a signature next to a yellow arrow. Is
16 that yours?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. I find that Mr.
19 Washington's waiver of his right to be indicted by a grand
20 jury is knowingly and voluntarily made, and I have signed the
21 waiver form.

22 What I want to do now is go over the rights that
23 you have and the rights that you'll be giving up if you plead
24 guilty.

25 First of all, you have the right to plead not

1 guilty. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: What that means is that you have a
4 choice in this matter and it's up to you to decide what to
5 do -- not your lawyer or anyone else.

6 Even if you are guilty, you can proceed to trial by
7 persisting in a not guilty plea, as you apparently wish to
8 do. Excuse me. Even if you are guilty, you have the right
9 to plead not guilty and go to trial. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. If you did plead not guilty, you
12 would have the right under the Constitution and laws of the
13 United States to a speedy trial. A trial would be before a
14 jury. The trial would be in public. You would be
15 represented by an attorney at the trial. Do you understand
16 that?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. At trial, you'd be presumed to
19 be innocent and that means that you wouldn't have to prove
20 that you're innocent.

21 As I explained earlier, it's the government's
22 burden to prove your guilt beyond a reasonable doubt. And if
23 you had a trial and the government would fail to meet that
24 burden of proof, the jury would have to find you not guilty.
25 Do you understand?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay. And that's why sometimes juries
3 return verdicts of not guilty, even though they believe the
4 defendant on trial probably committed the crime charged.
5 When a jury comes back with a not guilty verdict, they're not
6 saying they believe the defendant's innocent.

7 They're merely saying they're not convinced beyond
8 a reasonable doubt that he is guilty. Do you understand the
9 difference between those two things? On the one hand, the
10 jury finding you not guilty and on the other hand, the jury
11 saying they're not convinced beyond a reasonable doubt that
12 you are guilty. I'm confusing things, aren't I?

13 THE DEFENDANT: Yes.

14 THE COURT: I apologize. I said -- I said this
15 many times that it sometimes is unclear. When you go to
16 trial, you're presumed innocent.

17 THE DEFENDANT: Right.

18 THE COURT: And it's the government that has to
19 prove that you're guilty. And they have to prove that guilt
20 beyond a reasonable doubt. So after a trial, juries come
21 back with a verdict of guilty. Sometimes. When they do
22 that, they're not saying you're innocent. All right? They
23 may think you probably committed the crime, but the
24 government didn't satisfy its burden of proof to prove your
25 guilty beyond a reasonable doubt. So that's why they come

1 back with the not-guilty verdict. That's why I'm asking you
2 do you understand the difference between those two things?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. I'm sorry I confused it for you.
5 I confused it for myself, too, there for a second.

6 When you have a trial, you have the right to have
7 the government come into court and bring its witnesses to
8 testify in your presence. Those witnesses testify under
9 oath. Your lawyer has the right to cross-examine them. Your
10 lawyer can object to the evidence that is offered by the
11 government, and the lawyer can also offer evidence on your
12 behalf. Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. Your lawyer also has the right
15 to subpoena witnesses or compel them to come into court and
16 testify on your case. Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: If you did go to trial, you would have
19 the right under the Constitution and laws of the United
20 States to testify if you wanted to.

21 On the other hand, you couldn't be forced to
22 testify if you didn't want to. Under our legal system, no
23 one can be forced to testify against himself and if you had a
24 trial and did not testify, Judge Weinstein would tell the
25 jury that they couldn't hold that against you because it's

1 your Constitutional right not to testify against yourself.
2 Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. If instead of going to trial,
5 you plead guilty to the crime that's charged and if Judge
6 Weinstein accepts that plea, you'll be giving up your
7 Constitutional right to a trial and all the other rights I've
8 just discussed. There will be no trial in this case. The
9 Court will simply enter judgment of guilty based upon your
10 plea. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Now if you do plead guilty, you're
13 going to have to tell me why you are guilty. I may ask you
14 some questions to figure it out and by doing that, you're
15 giving up your right not to testify against yourself. Do you
16 understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. And also if you enter a guilty
19 plea today and you admit the criminal conduct that's alleged
20 in the superceding information, and if Judge Weinstein
21 accepts the plea, you'll be giving up your right to appeal to
22 a higher court on whether you committed the crime. That will
23 be over by your guilty plea. Do you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. Are you willing to give up your

1 right to a trial and all the other rights I've just
2 discussed?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. I understand that you've entered
5 into a plea agreement with the government.

6 THE DEFENDANT: Yes.

7 THE COURT: We've marked the plea agreement as
8 Court Exhibit 1 and there a number of signatures on the last
9 page, again one of which is next to the yellow arrow. Is
10 that yours?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. Mr. Washington, did you read
13 this plea agreement carefully before you signed it?

14 THE DEFENDANT: Yes.

15 THE COURT: Did you discuss it with your attorneys?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you believe you understand what's
18 contained in this plea agreement?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. Mr. Paulsen, does the plea
21 agreement contain the entirety of any understanding the U.S.
22 Attorney's Office has with Mr. Washington concerning these
23 charges?

24 MR. PAULSEN: It does, Your Honor.

25 THE COURT: Is that your understanding as well, Ms.

1 Hoyes?

2 MS. HOYES: Yes, Your Honor.

3 THE COURT: I take it that you've reviewed the plea
4 agreement with Mr. Washington?

5 MS. HOYES: Yes, I have.

6 THE COURT: Are you satisfied that he understands
7 what's contained in it?

8 MS. HOYES: Yes, I am.

9 THE COURT: Okay. Mr. Washington, is there
10 anything in the plea agreement that's not clear to you that
11 you would like me to explain to you now?

12 THE DEFENDANT: No. I'm good.

13 THE COURT: Okay. Other than the promises that are
14 contained in the plea agreement, has anyone made other
15 promises to you that's causing you to plead guilty?

16 THE DEFENDANT: No.

17 THE COURT: All right. I want to go over carefully
18 what the penalties are for the crime to which you may plead
19 guilty -- or the crimes, I should say.

20 Count 1, sexual exploitation of a child, carries a
21 maximum term of imprisonment of 30 years, a minimum term of
22 imprisonment of zero -- excuse me -- 15 years, a minimum term
23 of supervised release of five years and a maximum term of
24 supervised release of life.

25 Supervised release is a period of time after you

1 get out of prison where you have to live by certain terms and
2 conditions, and if you violate those terms and conditions,
3 you can be sentenced for up to three years without credit for
4 time you had previously spent in prison or time you spent
5 previously on post-release supervision.

6 And if you commit on supervised release certain
7 enumerated offenses that are listed in the plea agreement,
8 you can be sentenced to five years -- a minimum of five years
9 and up to the maximum term for those enumerated crimes.

10 There's a maximum fine of \$250,000 maximum. There
11 is mandatory restitution that's set forth in paragraphs 12
12 through 16 of the plea agreement. There is a \$100 special
13 assessment.

14 There is also criminal forfeiture which is listed
15 in paragraphs 6 through 10 of the agreement and you must also
16 register as a sex offender pursuant to the Sex Offender
17 Registration and Notification Act.

18 The possession of child pornography crime, Count 2,
19 carries a maximum term of imprisonment of 20 years, a minimum
20 term of imprisonment of ten years, similar minimum and
21 maximum terms of supervised release of five years and life,
22 maximum fine of \$250,000, similar restitution and special
23 assessments and also criminal forfeiture and registration as
24 a sex offender. Do you understand all of that?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay.

2 (Pause.)

3 THE COURT: Now I want to briefly go over the
4 sentencing analysis that Judge Weinstein will go through to
5 determine what sentence to give you. He first has to
6 consider the advisory sentencing guidelines issued by the
7 United States Sentencing Commission.

8 Those are guidelines that judges look to to
9 determine what a reasonable sentence is in a criminal case.
10 Again, they're advisory. They're not mandatory, but they're
11 an important consideration in sentencing and Judge Weinstein
12 will take them into account as one factor in determining what
13 sentence to give you.

14 I asked Ms. Hoyes if she has gone over the
15 sentencing guidelines, what they are and how they affect your
16 case with you, and she said yes, she had discussed that with
17 you. Is that correct?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. The second step is for
20 Judge Weinstein to consider whether there are any factors
21 present that would allow him to depart from the guidelines,
22 either upwardly or downwardly, and he also has to consider
23 the factors set forth in the sentencing statute against all
24 the facts and circumstances of your case, and it may be that
25 what's called a non-guidelines sentence applies.

1 I understand from the plea agreement that
2 considering all of the adjustments to the sentencing
3 guidelines, that you are looking at a sentencing guideline
4 range of 360 to 600 months. Is that correct, Mr. Paulsen?

5 MR. PAULSEN: It is, Your Honor.

6 THE COURT: Okay. Ms. Hoyes, have you done your
7 own analysis of the guidelines?

8 MS. HOYES: We've reviewed the guidelines and the
9 enhance -- the various enhancements that the government has
10 included here.

11 THE COURT: Do you have any different calculation
12 that the Court should be aware of at this point?

13 MS. HOYES: Not at this time, Your Honor.

14 THE COURT: Okay. You are going to be sentenced,
15 Mr. Washington, on January 15th at 10 a.m. Prior to that
16 date, Judge Weinstein will get a pre-sentence report from the
17 Probation Department.

18 It will have facts in it about you and the crime to
19 which you have pled guilty and it will have a recommendation
20 on what the guideline calculation is. Your attorney will
21 have the opportunity to review the pre-sentence report and to
22 challenge the facts contained in it.

23 One important thing for you to understand is that
24 regardless of what this guideline calculation is in the plea
25 agreement that we've talked about and regardless of what the

1 Probation Department argues is a proper guideline
2 calculation, Judge Weinstein will have to make his own
3 independent determination as to what the guidelines provide
4 in your case, considering the statutory minimums and
5 maximums, and he will come up with your sentence. It's up to
6 him. He listens to what everyone has to say, considers all
7 the arguments, but ultimately it's his decision. Do you
8 understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. The last thing I you to
11 understand about sentencing is that we don't have a parole
12 board or a parole commission in the federal system so
13 whatever sentence you do get from Judge Weinstein will be
14 very close to the actual amount of time you spend in prison
15 because you won't be able to write to a parole board to let
16 you out early because there is no such thing. Do you
17 understand?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Do you have any questions at
20 this point that you want to ask me about anything related to
21 this case --

22 THE DEFENDANT: No.

23 THE COURT: -- that's not clear to you?

24 THE COURT: Okay. Are you ready to plead?

25 THE DEFENDANT: Yes.

1 THE COURT: Ms. Hoyes, do you know of any reason
2 why Mr. Washington should not plead guilty?

3 MS. HOYES: No, I don't, Your Honor.

4 THE COURT: Do you know of any legal defense to
5 these charges?

6 MS. HOYES: I do not.

7 THE COURT: Okay. With respect to Count 1, sexual
8 exploitation of a child, Mr. Washington, how do you plead?
9 Guilty or not guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: With respect to Count 2, possession of
12 child pornography, how do you plead? Guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: Are you making these guilty pleas
15 voluntarily and of your own free will?

16 THE DEFENDANT: Yes.

17 THE COURT: Has anyone threatened, forced or
18 pressured you to plead guilty?

19 THE DEFENDANT: No.

20 THE COURT: Other than the plea agreement, has
21 anyone promises to you that is causing you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: Has anyone promised you what sentence
24 you'll receive from Judge Weinstein if you plead guilty?

25 THE DEFENDANT: No.

1 THE COURT: Okay. Why don't you tell me why you're
2 guilty of sexual exploitation of a child and possession of
3 child pornography?

4 MR. MORRIS: Your Honor --

5 MS. HOYES: Your Honor, if it's --

6 MR. MORRIS: May I ask my -- our client some
7 questions?

8 THE COURT: Any objection?

9 MR. PAULSEN: No objection, Your Honor.

10 THE COURT: Go ahead.

11 MR. MORRIS: Mr. Washington, the Winter and Spring
12 of 2009, did you try to persuade at least one minor to engage
13 in sexually explicit conduct?

14 THE DEFENDANT: Yes.

15 MR. MORRIS: And did you do that for the purpose of
16 producing a visual depiction of that conduct?

17 THE DEFENDANT: Yes.

18 MR. MORRIS: Did you do that in Queens --

19 THE DEFENDANT: Yes.

20 MR. MORRIS: -- New York? And did you know what
21 you were doing?

22 THE DEFENDANT: Yes.

23 MR. MORRIS: And you undertook your actions
24 voluntarily?

25 THE DEFENDANT: Yes.

1 MR. MORRIS: And you produced a visual depiction in
2 computer files on a BlackBerry phone?

3 THE DEFENDANT: Yes.

4 MR. MORRIS: Your Honor, we have no objection to
5 the government's proffer as to -- or expected proffer as to
6 the interstate commerce element.

7 THE COURT: Okay. And Mr. Washington, the person
8 was -- you knew the person was a minor at the time?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. Mr. Paulsen, do you think that's
11 sufficient?

12 MR. PAULSEN: Your Honor, I just have one
13 clarifying question. By a sexually explicit conduct, could
14 defense counsel inquire briefly into the nature of the
15 pictures just so it satisfies the statute that the photos
16 were a lascivious display of the genitals?

17 MR. MORRIS: Did the sexually explicit conduct
18 include explicit display of genitals?

19 THE DEFENDANT: Yes.

20 MR. PAULSEN: The government is satisfied.

21 THE COURT: Okay. And you have a proffer to make?

22 MR. PAULSEN: I'm sorry, Your Honor?

23 THE COURT: You have a proffer to make about --

24 MR. PAULSEN: Oh, yes, Your Honor. The government
25 asks that the defense stipulate that the item that was used

1 to make these photographs -- a BlackBerry mobile phone -- is
2 an item that is moved -- that has been mailed, shipped or
3 transported in interstate or foreign commerce.

4 MR. MORRIS: We have no objection.

5 THE COURT: Okay.

6 MR. PAULSEN: Thank you, Your Honor.

7 THE COURT: Do you think that's enough, Ms. Hoyes?

8 MS. HOYES: Yes, Your Honor.

9 THE COURT: Okay. I do as well.

10 Based on the information given to me, I find
11 that Mr. Washington is acting knowingly and voluntarily, that
12 he understands the charges pending against him, that he
13 understands his rights as a defendant in a criminal case,
14 that he appreciates the consequences of his waiver of
15 indictment and his guilty plea. It's also a fact -- there's
16 also a factual basis for the plea to both counts.

17 MS. HOYES: Your Honor, if I may interrupt. I
18 think actually we require a further allocution for Count 2 as
19 that involves a separate date and a separate item in
20 interstate commerce. There are actually two --

21 THE COURT: Oh, I didn't know it was a different
22 date.

23 MS. HOYES: -- two separate events.

24 THE COURT: I'm sorry. I apologize.

25 MS. HOYES: I apologize.

1 THE COURT: I thought it was one of -- it was part
2 of the --

3 MS. HOYES: I'm sorry.

4 THE COURT: -- part of the same.

5 MS. HOYES: So I think Mr. Morris will ask some
6 questions --

7 THE COURT: Okay. I apologize.

8 MS. HOYES: -- with respect to Count 2.

9 THE COURT: Go ahead, Mr. Morris.

10 MR. MORRIS: On February 22 or approximately that
11 date of 2013, did you view images on a computer?

12 THE DEFENDANT: Yes.

13 MR. MORRIS: And were those images of minors?

14 THE DEFENDANT: Yes.

15 MR. MORRIS: And were those images of minors
16 engaged in sexually explicit conduct?

17 THE DEFENDANT: Yes.

18 MR. MORRIS: And again, we do not object to the
19 government's expected proffer as the interstate commerce
20 element.

21 MR. PAULSEN: Yes, Your Honor. There's actually
22 two -- two issues from the government.

23 First off, the government would ask that the
24 defense stipulate that in viewing these -- viewing and
25 possessing these images, he used a computer and the Internet

1 to obtain these images.

2 MR. MORRIS: Did you use a computer and the
3 Internet?

4 THE DEFENDANT: Yes.

5 MR. MORRIS: And was this in Queens, New York?

6 THE DEFENDANT: Yes.

7 MR. PAULSEN: And that this for possession of these
8 images, not just viewing of them.

9 MR. MORRIS: This was for possession of the images?

10 THE DEFENDANT: Yes.

11 MR. PAULSEN: Your Honor, there is one other
12 stipulation. The government would ask that the defendant
13 stipulate that these -- among these images that he possessed
14 were images of actual children, not simulated or individuals
15 who would appear to be children but were not.

16 MR. MORRIS: Did you believe that the images that
17 you were viewing were of actual children?

18 THE DEFENDANT: Yes.

19 MR. PAULSEN: Your Honor, I believe the
20 government's content.

21 MS. HOYES: I think that's sufficient, Your Honor.

22 THE COURT: Yes. Again, so do I. There's a
23 factual basis for Count 2 now. It's therefore my
24 recommendation to Judge Weinstein that he accept Mr.
25 Washington's guilty plea to both Counts 1 and 2. Anything

1 else?

2 MR. PAULSEN: Nothing from the government, Your
3 Honor.

4 MS. HOYES: No.

5 MR. PAULSEN: Excuse me.

6 MS. HOYES: Nothing further from the defense.

7 THE COURT: All right. Thank you.

8 MR. PAULSEN: Thank you, Your Honor.

9 (Proceedings concluded at 3:47 p.m.)

10 I, CHRISTINE FIORE, court-approved transcriber and
11 certified electronic reporter and transcriber, certify that
12 the foregoing is a correct transcript from the official
13 electronic sound recording of the proceedings in the above-
14 entitled matter.

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17 _____ November 12, 2014
18 Christine Fiore, CERT
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